



**MINUTES  
FREMONT PLANNING COMMISSION  
REGULAR MEETING OF JUNE 9, 2005**

CALL TO ORDER: Chairperson Harrison called the meeting to order at 7:00 p.m.

PRESENT: Chairperson Harrison, Commissioners Chan, King (arrived 7:12 p.m.), Lorenz, Lyndon, and Sharma

ABSENT: Commissioner Weaver

STAFF PRESENT: Jeff Schwob, Planning Director  
Larissa Seto, Senior Deputy City Attorney II  
Norm Hughes, City Engineer  
Cliff Nguyen, Planner II  
Alice Malotte, Recording Clerk  
Chavez Company, Remote Stenocaptioning  
Walter Garcia, Video Technician

APPROVAL OF MINUTES: None

**CONSENT CALENDAR**

THE CONSENT LIST CONSISTED OF ITEM NUMBERS 2, 3, 5, AND 6.

IT WAS MOVED (SHARMA/CHAN) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTION ON ITEM NUMBERS 2, 3, 5, AND 6.

**Item 2. PURPLE LOTUS TEMPLE – Fox Avenue – (PLN2003-00313)** – to consider a Conditional Use Permit application and Preliminary Grading Plan for a 55,560 square foot Buddhist temple (Purple Lotus Temple) with living quarters for 120 persons (monks and guests) and a maximum capacity of 150 persons in the main hall (water ceremony hall, cafeteria at same time) and a 32,400 square foot institute (Dharma Institute) with a capacity of 250 students (consisting of adults and high school students), including quarters for 50 students, on 5.5 acres located on the south side of Fox Avenue in the Niles Planning Area. A Draft Mitigated Negative declaration was prepared and circulated in conjunction with this project.

**CONTINUE TO JUNE 23, 2005 TO ALLOW THE APPLICANT TO MEET WITH THE CITY OF UNION CITY REGARDING A SECONDARY EMERGENCY ACCESS AND TO ADDRESS COMMENTS FROM THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD.**

**Item 3. VERIZON HWY238/NILES - 325 Mowry Avenue – (PLN2005-00195)** – to consider a Conditional Use Permit for installation of a 65-foot stealth tree monopole and related back up equipment as part of a proposed Verizon Wireless telecommunication facility at the Mowry U-Storage in the Central Planning Area. This project is categorically exempt from CEQA review, per Section 15303, New Construction or Conversion of Small Structures.

**Commissioner Lorenz** asked about the longevity for such facilities.

**Planning Director Schwob** replied that suggested that a condition be added that the stealth tree monopole be kept up and foliage replaced as necessary to maintain its appearance.

**HOLD PUBLIC HEARING;**

**AND**

**FIND PLN2005-0195 IS EXEMPT FROM CEQA REVIEW PER SECTION 15303, NEW CONSTRUCTION, OR CONVERSION OF SMALL STRUCTURES;**

**AND**

**FIND THAT PLN2005-0195 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS, AND POLICIES SET FORTH IN THE GENERAL PLAN'S FUNDAMENTAL GOALS, LAND USE, AND NATURAL RESOURCE CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;**

**AND**

**FIND THAT PLN2005-0195 IS IN CONFORMANCE WITH STANDARDS OF THE WIRELESS TELECOMMUNICATIONS ORDINANCE (#2213);**

**AND**

**FIND THAT PLN 2005-0195 IS IN CONFORMANCE WITH THE ZONING REQUIREMENTS OF THE C-T, THOROUGHFARE COMMERCIAL ZONING DISTRICT;**

**AND**

**APPROVE PLN2005-0195, OPTION B (STEALTH TREE MONOPOLE) AS SHOWN ON EXHIBIT "A", SUBJECT TO FINDINGS AND CONDITIONS IN EXHIBIT "B".**

- Item 5. PACIFIC COMMONS – Southwest corner of Boscell Road and Auto Mall Parkway - (PLN2005-00265)** - to consider a Finding for Conceptual Site Plan Approval for Planning Area 4 for a 171,060 square foot Major Retail Development on a 15.34 acre parcel of land, located on the southwest corner of Auto Mall Parkway and Boscell Road, in the Industrial Planning Area. An EIR and Supplemental EIR were previously approved for the Pacific Commons project. An Addendum was prepared and adopted for the Planned District Amendment, finding the project to be consistent with the original plan and environmental documents. The Conceptual Site Plan implements the Planned District Major Amendment.

**Chairperson Harrison** noted that Catellus Development Corporation had been purchased by another company, and he expressed hope that this project would stay as originally envisioned.

**HOLD PUBLIC HEARING;**

**AND**

**FIND THAT THE EIR AND SUPPLEMENTAL EIR PREVIOUSLY APPROVED FOR THE PACIFIC COMMONS PROJECT, AND THE ADDENDUM ADOPTED FOR THE PLANNED DISTRICT MAJOR AMENDMENT ARE CONSISTENT WITH THE CONCEPTUAL SITE PLANS WHICH IMPLEMENT THE PLANNED DISTRICT MAJOR AMENDMENT AND THAT NO FURTHER ENVIRONMENTAL REVIEW IS REQUIRED;**

**AND**

**FIND PLN2005-00265 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATION, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE AND LOCAL ECONOMY CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;**

**AND**

**FIND PLN2005-00265 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN PACIFIC COMMONS PLANNED DISTRICT DEVELOPMENT STANDARDS AND GUIDELINES SUPPLEMENT "B". THESE PROVISIONS INCLUDE**

THE COORDINATION OF THE MAJOR SITE SYSTEMS SUCH AS BUILDING ORIENTATION, VEHICULAR AND PEDESTRIAN CIRCULATION, PARKING LAYOUT, OPEN SPACE, PLAZA AREA LOCATIONS, CONCEPTUAL LANDSCAPING, AND CONCEPTUAL UTILITY LOCATIONS;

AND

APPROVE PLN2005-00265 FOR PLANNING AREA 4 AS SHOWN ON EXHIBIT "A".

- Item 6. FREMONT PARK GOLF CENTER - 39751 Stevenson Place – (PLN2005-00281)** - to consider a Preliminary Grading Plan to redistribute approximately 14,000 cubic yards of soil and install synthetic turf on an existing golf driving range property located in the Central Planning Area. This project is categorically exempt from CEQA review, per Section 15304(a), Minor Alterations to Land.

**CONTINUE TO JUNE 23, 2005 TO ALLOW THE APPLICANT TO REFINE THE GRADING PLAN.**

The motion carried by the following vote:

AYES:	5 – Chan, Harrison, Lorenz, Lydon, Sharma
NOES:	0
ABSTAIN:	0
ABSENT:	1 – King, Weaver
RECUSE:	0

## **PUBLIC COMMUNICATIONS**

### **ORAL COMMUNICATIONS**

### **PUBLIC HEARING ITEMS**

- Item 1. AUTOMALL COMMONS - Automall Parkway @ South Lake Common – (PLN2005-00167)** – to consider a General Plan Amendment and Rezoning of an approximately 0.94 acre parcel from Office Commercial to Residential Medium Density (15-18 dwelling units per acre), and from P-69-2 (Planned Development) District to R-3-18 (Multi-Family Residential) in the Irvington Planning Area. A mitigated negative declaration has been prepared and circulated for the project.

**Jitender Makkar**, Edge Concepts, Inc., stated that single-story development surrounded the site on three sides. This project would help meet the City's goal for new housing with less density than could be requested. A 20-foot setback and two stories would be at the rear and side of the property to provide a buffer for the mobile home park. A three-story elevation would be constructed at the front. This was a very up and coming area with a major transit access and the new development on Auto Mall Parkway across I-880.

**Commissioner Sharma** stated that the mobile home residents were worried about overflow parking, as noted in the minutes of the meeting that the applicant had with them.

**Mr. Makkar** replied that the location of the parking had been completely revised as a result of that meeting.

**Commissioner Chan** asked if 16 to 17 residential units were planned and if it was understood that this project would have to meet the City's inclusionary zoning requirement, which would require below-market-rate units.

**Mr. Makkar** stated that she was correct and two below-market-rate units would be provided.

**Chairperson Harrison** opened the public hearing.

**Audrey Schauer**, South Lake Mobile Home Park resident, stated that she was opposed to the project, because the park's driveway would provide access to the project and it would be dangerous for vehicles entering and exiting. When Wal\*Mart and Pacific Commons were in full operation, the increased traffic on Auto Mall Parkway would make it difficult at that intersection. She believed that a traffic signal was "desperately" needed. She also objected to the noise that would be created by this "high density" project. She claimed that with the 336 units in the park, more than 1,000 vehicles per day came in and out of the park. Neither she nor her neighbors had received a notice about any meetings being held. She asked that the Commissioners visit the site in order to understand her concerns.

**Commissioner Lydon** asked if it was fair to say that the speaker's main concern was the traffic.

**Ms. Schauer** replied that was part of it, along with noise and parking.

**Commissioner Lydon** asked her where she expected the noise to be generated from.

**Ms. Schauer** believed that noise generated from the units above the parking structure would travel to the park. She also stated that the privacy of the nearby mobile home residents would be compromised, because the elevated units would allow the new residents to look into their yards. This was the main concern expressed at a meeting she had attended approximately six months ago.

**Commissioner Lydon** asked if she had previously stated that she had not been aware of any meetings held regarding this project.

**Ms. Schauer** replied that she had attended one meeting at a sports club near Milpitas a few months ago. However, she had not been aware of any other meetings. She was told of this hearing by a neighbor who had received a notice.

**Commissioner King** asked where she would like the traffic signal to be located and if she would be in favor of this project if a signal were installed.

**Ms. Schauer** stated that the signal should be "where we come across." She would not be in favor of the project, even with a traffic signal. It was not appropriate for homes to be located on a street that was scheduled to become six lanes in the future. She would prefer that a park be created at this location.

**Commissioner Lorenz** asked if the speaker lived on Winnepeg Terrace and if it backed up to the proposed project. He asked if she had attended the January 17<sup>th</sup> meeting at Club Sport. According to the minutes, "all residents desired a six-foot solid wood fence versus a concrete wall." He asked if that sounded familiar. It seemed that a six-foot high concrete sound wall would mitigate some of the noise that she was worried about.

**Ms. Schauer** stated that her home was not adjacent to the project, but was farther down at the end of the park. She believed that the residents wanted a wall rather than the wood fence.

**Salim**, Fremont resident, noted that two low-cost homes would be included within the project. He believed that projects like this were important, because many people working in the community could not afford to live here.

**Commissioner King** asked the speaker if he was in favor of the project.

**Mr. Salim** replied that he was.

**Commissioner Sharma** stated that he had met with the applicant.

**Chairperson Harrison** asked the applicant to address access to and from the project when he made his closing statement.

**Mr. Makkar** understood the concerns the first speaker had expressed. However, the access to the property would be from a private street, not from Auto Mall Parkway. A stop sign was currently located at the entrance to the mobile home park. A stop sign at the entrance to his development would be proposed, which should address the traffic concerns. The Public Works Department did not believe that an additional 32 to 35 vehicles associated with this project would provide a major traffic addition to Auto Mall Parkway. With two stories planned for the rear of the project adjacent to the mobile home park, along with the 20-foot setback and the approximately 10-foot setback on the park's property, the privacy of the park's residents should not be intruded upon. Parking would be in the front of the project, so vehicle noise should not be transferred to the mobile home park. All residential units would have double-glazed windows, which should minimize noise generated from the units. A sound consultant would be engaged to address sound concerns. He was willing to work with the City and the mobile home park residents during the design process to address concerns. He closed by asking for support for his project.

**Chairperson Harrison** asked if this was to be a two-story development that included both the garage and residential units. He asked if the applicant was comfortable with working with staff and the adjacent neighbors concerning the fence, as the project moved forward.

**Mr. Makkar** replied that the project would be three stories at the front along Auto Mall Parkway and two stories, only, at the rear. He directed the Commission's attention to the conceptual sketch.

**Commissioner Lorenz** stated that he was in favor of staff's recommendation and asked if the parking change was shown in the drawings that the Commissioners had received. He asked that the CC&Rs specify that parking was to be within the project, only, which should alleviate the neighbors' parking fears. He encouraged the applicant to continue to communicate with the mobile home park residents.

**Mr. Makkar** stated that the Commissioners did have the change in parking.

**Commissioner Sharma** asked if people who were leaving the project would turn left to get to Auto Mall Parkway and people who entering the project would turn right and right, again. He asked if South Lake Common was divided at the point where the new road into the project would be created.

**Mr. Makkar** stated that he was correct about exiting and entering the project. The specific location for the entrance had not been decided, but he would work with the City concerning it.

**Chairperson Harrison** closed the public hearing.

**Chairperson Harrison** asked what the future for Auto Mall Parkway held. He asked if traffic warranted a traffic signal in the future, would it be treated like any other potential signal in the city.

**City Engineer Hughes** replied that Auto Mall Parkway would be increased to six lanes in the future. However, there was no funding available for that project in near future. Busy

intersections were surveyed annually and a priority list for traffic signals was established. That intersection was not on the list at this time, but could be added if warranted.

**Chairperson Harrison** asked if this project would be heard again for architectural approval by the Commission. Would that be the appropriate time to consider adjacent neighbors' privacy concerns and other architectural matters?

**Planning Director Schwob** stated that this project would come back to the Commission for site plan and architectural approval. Yes, those concerns would be taken up at that time.

**Commissioner King** followed up by asking for a description of the process involved with installing a new traffic signal at an intersection.

**City Engineer Hughes** replied that, based upon citizen comments, the Traffic Engineering staff would review the intersection and make a preliminary determination. If there seemed to be a potential need for a signal, traffic counts would be taken, traffic delay would be observed and accident history and pedestrian traffic would be reviewed, along with other warrants. The intersection would be ranked numerically and placed on the list, which was annually reviewed and recommended to City Council. This year one signal would be installed within the City.

**Commissioner King** stated that it seemed that the Planning Commission was not involved with the installation of new traffic signals. He asked how the previous speaker could initiate the process and how the numeric rating for an intersection was determined.

**City Engineer Hughes** stated that the speaker should contact the Traffic Engineering Division. The numeric rating was determined by all of the actions noted above, based on State standards that all cities used.

**Chairperson Harrison** stated that he did not like to see commercial space become residential space. However, he understood that the other side of Auto Mall Parkway seemed to be the location for commercial uses and he asked that he be "sold" on allowing this parcel to be used for residential use.

**Planning Director Schwob** replied that this property had been designated for office uses and within the last three years, other uses had been proposed for this site, i.e., a Seven Eleven and a veterinary clinic. Apparently, this site was not in the right place with a right interface, or it would have developed by now.

**Commissioner Lydon** believed that by the time this item had returned to the Commission, the first speaker's concerns about the entrance/exit would be addressed. He concurred with her assessment that the potential for trouble was there.

IT WAS MOVED (KING/LORENZ) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1-0)  
THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

**AND**

**RECOMMEND THAT THE CITY COUNCIL FIND THE INITIAL STUDY HAS EVALUATED THE POTENTIAL FOR THIS PROJECT TO CAUSE AN ADVERSE EFFECT -- EITHER INDIVIDUALLY OR CUMULATIVELY -- ON WILDLIFE RESOURCES. THERE IS NO EVIDENCE THE PROPOSED PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES;**

**AND**

**RECOMMEND THAT THE CITY COUNCIL APPROVE A MITIGATED NEGATIVE DECLARATION, MITIGATION MONITORING AND REPORTING PROGRAM AND RESPONSES TO COMMENTS AND FIND THAT IT REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT;**

**AND**

**FIND THAT GENERAL PLAN AMENDMENT AND REZONING ARE IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE AND HOUSING ELEMENT CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;**

**AND**

**RECOMMEND THAT THE CITY COUNCIL APPROVE PLN2005-00167 TO AMEND THE GENERAL PLAN LAND USE DIAGRAM TO DESIGNATE THE SITE FOR RESIDENTIAL, MEDIUM DENSITY (15-18 UNITS/ACRE), AND REZONE IT TO THE R-3-18 (MULTIPLE FAMILY RESIDENTIAL DISTRICT) IN CONFORMANCE WITH EXHIBITS "A" (GENERAL PLAN AMENDMENT) AND "B." (REZONING EXHIBIT).**

The motion carried by the following vote:

AYES:	6 – Chan, Harrison, King, Lorenz, Lydon, Sharma
NOES:	0
ABSTAIN:	0
ABSENT:	1 - Weaver
RECUSE:	0

- Item 4. DUSTERBERRY TOWNHOMES – 37010 Dusterberry Way – (PLN2005-00232)** - to consider (a) a General Plan Amendment to change the land use designation of a 1.92-acre parcel from Community Commercial (Centerville Specific Plan Overlay) to Medium Density Residential, 18-23 du/ac (Centerville Specific Plan Overlay); (b) an Amendment to the Centerville Specific Plan to allow a Medium Density Residential Use In Subarea 6; and, (c), a Rezoning of the parcel from C-C (CSPC), Community Commercial, to R-3-23 (CSPC), Multi-family Residence District. A Mitigated Negative Declaration has been prepared.

**Kendall Riding**, applicant, stated that the Postal Service had decided that this property was not appropriate for expansion and had made it available for development. She was comfortable with the staff report and its recommendation, and she asked for approval from the Commission.

**Chairperson Harrison** opened the public hearing.

**Dar Chen**, Immanuel Presbyterian Church of Fremont, stated that his church was adjacent to the proposed construction. He had no objections to the project, but he was concerned about how additional traffic would affect the intersection of Hanson Avenue and Dusterberry Way. Currently, this intersection was difficult to navigate. He requested that a traffic signal be included in the plans for this development. His other concern was how the construction could affect the tilt-up walls of the church, which had experienced some cracking, and he asked that vibration monitoring be performed during construction. Parking overflow was also a concern.

**Reverend Maynor Morales**, Pastor Templo Betania, stated that his church was located across from the project. He was also in favor of the project. However, he also expressed concern regarding safety and traffic at the intersection mentioned above. He felt that the project of more than 100 units being constructed at Maple Street and Hanson Avenue added to the 41 proposed units definitely provided evidence that a traffic signal should be installed. He asked why time and money had to be spent for a study when anyone could see that it was needed. He asked how many stories the building would consist of and if plenty of parking would be available for its residents. He asked if the developer could team with the city to share expenses for a signal.

**Ms. Riding** closed with stating that preliminary traffic and circulation had been discussed with the city, and she expected to meet all parking requirements. All city guidelines would be met during the construction process. One neighborhood meeting had been held, and she expected to continue communicating with the neighbors during construction. She had spoken with Mr. Chen and was aware of his concerns.

**Chairperson Harrison** asked if parking requirements would be met on site.

**Ms. Riding** answered, "Yes."

**Commissioner Lorenz** noted that the two previous speakers were, generally, in favor of the project. He asked what kind of upgrades would be performed at the corner of Hanson Avenue and Dusterberry Way.

**Ms. Riding** replied that access to the development and how close it would be to the intersection had been discussed with staff but not decided upon, yet.

**Chairperson Harrison** closed the public hearing and, for the record, acknowledged the communication received from the applicant. He asked if the anticipated growth of traffic could change the ranking for an intersection needing a traffic signal.

**City Engineer Hughes** replied that traffic projections would be performed. As an example, traffic signals were installed to accommodate the expected expansion of traffic associated with Pacific Commons before any vehicles had existed on that property. Traffic volumes on both Dusterberry Way and Hanson Avenue were not as large as at some cross streets within the city that did not yet have traffic signals. An immediate need for a traffic signal at this intersection was not seen.

**Chairperson Harrison** asked if the city ever required that a developer install and fund, either fully or partly, a traffic signal associated with their development.

**City Engineer Hughes** stated that every project contributed to traffic impact fees. In a large project with a new intersection, the developer would be asked to install a new traffic signal, as a mitigation, in addition to the traffic impact fee.

**Commissioner Sharma** asked if accidents at a particular intersection were taken into consideration, along with the volume of traffic.

**City Engineer Hughes** agreed that accident history did raise signal warrant points and did help to raise that signal up the priority list.

**Commissioner Chan** asked for comment from staff concerning the construction on Maple Street. She asked if construction of that project would be concurrent with this project. She asked how the vibration issue might affect the city's liability, if the first speaker's church walls had increased cracking.

**Planning Director Schwob** replied that the Maple Street project consisted of two components, one of which was construction of the single-family homes on Hanson Avenue. They could be constructed concurrently with this project, depending upon how quickly this project moved forward. However, he expected that the majority of the Maple Street project would be completed before this project began construction.

**Senior Deputy City Attorney Seto** stated that the church would make a claim to the developer. However, the church would have to document what the existing condition was before construction and it would have to be reviewed as construction proceeded. She



suggested that the church consider hiring a consultant to perform a study, if it seemed necessary.

**Commissioner Chan** asked if it would be prudent for the church to have a study done to provide a baseline.

**Senior Deputy City Attorney Seto** suggested that a study be performed just before the construction started. If construction did not start for 12 or 18 months and the study was performed soon, it would be difficult to pinpoint if a change to the wall happened during that interim period.

**Commissioner Lydon** agreed with the points made by the two speakers concerning traffic. Two unusual occurrences were at play at this intersection:

- A significant distance occurred between Thornton and Hanson Avenues, which allowed the speed of traffic to be faster than normal
- Going north on Dusterberry Way, the railroad tracks made it difficult for a driver to see what was ahead on the other side of the tracks

**Commissioner Lydon** continued by suggesting that some kind of traffic mitigation measure might be considered if this intersection was not near the top of the list for a traffic signal. He suggested that the traffic volume be measured on the weekend when the churches were in session, along with the normal measurements taken during the week.

**Commissioner Sharma** asked that a condition be added to research how a signal might be installed.

**City Engineer Hughes** stated that all of the comments above would be taken into account during the final design of the project.

IT WAS MOVED (KING/LORENZ) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1-0) THAT THE PLANNING COMMISSION **HOLD PUBLIC HEARING;**

**AND**

**RECOMMEND THAT THE CITY COUNCIL FIND THE INITIAL STUDY CONDUCTED FOR THE PROJECT HAS EVALUATED THE POTENTIAL IMPACTS THAT COULD CAUSE AN ADVERSE EFFECT, EITHER INDIVIDUALLY OR CUMULATIVELY, ON WILDLIFE RESOURCES AND FIND THAT THERE IS NO EVIDENCE THE PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES. AS A RESULT, RECOMMEND THE FILING OF A CERTIFICATE OF FEE EXEMPTION FOR THE PROJECT;**

**AND**

**RECOMMEND TO THE CITY COUNCIL THE ADOPTION OF DRAFT MITIGATED NEGATIVE DECLARATION FINDING THAT THERE IS NO SUBSTANTIAL EVIDENCE THAT THE PROJECT, AS MITIGATED, WILL HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT AND FURTHER FIND THAT THIS ACTION REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT;**

**AND**

**RECOMMEND TO THE CITY COUNCIL APPROVAL OF THE MITIGATION MONITORING PLAN FOR THE PROJECT;**

**AND**

**FIND THAT THE PROJECT IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN AND CENTERVILLE SPECIFIC PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE AND HOUSING CHAPTERS AND CENTERVILLE SPECIFIC PLAN AS ENUMERATED WITHIN THE STAFF REPORT;**

**AND**  
**RECOMMEND TO CITY COUNCIL APPROVAL OF PLN2005-00232 TO AMEND THE GENERAL PLAN LAND USE DESIGNATION FOR THE PROJECT IN CONFORMANCE WITH EXHIBIT "A" (GENERAL PLAN AMENDMENT EXHIBIT);**

**AND**  
**RECOMMEND PLN2005-00232 TO THE CITY COUNCIL TO AMEND THE ZONING MAP IN CONFORMANCE WITH EXHIBIT "B" (REZONING EXHIBIT);**

**AND**  
**RECOMMEND PLN2005-00232 TO THE CITY COUNCIL A RESOLUTION TO ADOPT EXHIBIT "C", "C1" AND "C2" (AMENDMENT TO CENTERVILLE SPECIFIC PLAN—TEXT AND DIAGRAMS).**

The motion carried by the following vote:

AYES:	6 – Chan, Harrison, King, Lorenz, Lydon, Sharma
NOES:	0
ABSTAIN:	0
ABSENT:	1 - Weaver
RECUSE:	0

**Chairperson Harrison** called for a recess at 8:05 p.m.

**Chairperson Harrison** called the meeting back to order at 8:17 p.m.

**Item 7.     SANDHU RESIDENCE – East King – (PLN2005-00058)** - to consider adoption of Findings and Conditions for a Conditional Use Permit and Preliminary Grading Plan for the development and use of a 16,214 square foot single-family residence located in the Hill Area of the Niles Planning Area. A Mitigated Negative Declaration has been prepared and circulated for this project.

**Planning Director Schwob** noted that modifications involved moving the building site into the saddle area, easterly of the former Site 1 location and other modifications, to the findings and conditions to reflect the revised proposal.

**Commissioner Sharma** asked if “Delete Mitigations 8 and 9 should be changed to “Delete Mitigations 7 and 9.”

**Planning Director Schwob** replied that those deletions would be clarified. He also stated, for the record, that staff had received the PDF files from Dr, Sandhu and his team and a letter from Stuart Flashman, dated June 7<sup>th</sup>.

**Commissioner Sharma** disclosed that he had spoken with the applicant concerning the project.

**Commissioner King** stated that he had spoken with Dr. Sandhu, previously, but he had not spoken with him since the last hearing.

**Commissioner Lorenz** also disclosed that he had spoken with the applicant, his architect and several city staffers.

**Dr. Sukhwinder Sandhu**, applicant, reminded the Commission that his project had been approved at the April 28<sup>th</sup> meeting with the Conditions of Approval to come back to the Commission for review and approval. Subsequently, Curtis Priem, the Gearhart’s representative, had asked him to agree to a continuance in order to allow time to consider a proposal by the Gearharts. They would not file an appeal if he agreed to meet their

requirements. He also reminded the Commissioners that two years had passed since he had originated this project and he had spent, to date, more than 200,000 dollars. He agreed to the proposal, as follows:

- Moving house 65 feet in an easterly direction to incline area and rotating it clockwise, which would cost one-third more to build and possibly increase grading
- The visual plain from Quarry Lake would not be compromised
- No impacts to 30 percent slopes while improving access road

**Commissioner Lorenz** asked if the Planning Commission had approved this project prior to his joining the Planning Commission and if a few weeks ago, with the house moved back, the Commission again approved the project. He asked why the applicant had agreed to move the house, again. He asked who “they” were and whom they represented.

**Dr. Sandhu** stated that he was correct about the prior approvals. He stated that he had agreed to move the house, because he “was threatened with an appeal.” “They” were the Gearharts and their representative. Curtis Priem had contacted him and he had understood that Mr. Priem was in close contact with the Gearharts.

**Commissioner Chan** asked if the size of the house had changed.

**Dr. Sandhu** replied that the size of the house remained the same.

**Chairperson Harrison** opened the public hearing.

**Stuart Flashman**, representing Friends of the Hill Area Initiative and James and Susan Gearhart, stated that Curtis Priem had not represented the Gearharts, he, the speaker, represented the Gearharts. Curtis Priem had attempted to mediate between his clients and the applicant, which was not successful. After consultation with members of the group, the conclusion was that moving the home was a very beneficial step, but the 30 percent slope was still a problem. The opinion of the applicant’s engineer did not agree with staff’s opinion, and he believed that there was not enough information to prove that the road would not go into the 30 percent area. The new architect’s sketch was all that was available for approval. No preliminary grading plan had been submitted for this new proposal and if approved, it would be approved “sight unseen.” He disagreed with staff reviewing the preliminary grading plan and approving it without review by the Planning Commission. In his opinion, if this project were approved at this hearing, the Planning Commission was abdicating their responsibility and, either way, the decision would be appealed to City Council. He reminded the Commission that, if it approved this proposal, they were making a statement to the City’s residents who had voted for Measure T.

**Commissioner King** asked the speaker, in his judgment, had the applicant done the three things that were requested of him at the last meeting.

**Mr. Flashman** agreed that “maybe moving the site off the hilltop had been done,” although there was no grading plan to show that it was feasible and what it would be like. There was nothing in the Conditions of Approval to reflect that there would be no encroachment into the 30 percent slope.

**Curtis Priem**, 20-year resident, reminded the Commission that at the last meeting he spoke about his fear that this project and the opposition to it could dismantle Measure T and how litigation should be avoided. With that in mind, he stated that he was “a little caught off guard,” because he had understood that a solution had been reached that everyone had agreed to. He thanked the applicant, the Gearharts and City Engineer Hughes for the time they had spent on these issues. The basic issues, as listed on the handout given to the Commissioners, were as follows:

1. **Moving the home site to Location 1B, between former Locations 1 and 1A.** This allowed the southern and northern portions of the house to be moved back approximately 82 feet and 100 feet, respectively, from the top part of the knoll.
2. Per the wording from Mr. Flashman, **there was to be no encroachments into areas of over 30% slope. If any retaining walls are necessary, they should be covered or finished using native rock or color(s).** The road would be weatherproofed, as is. He had walked the road with the applicant and the narrowest portion of the road measured 19 feet with the rest of the road measuring 21 feet, including the soft shoulder.
3. As requested by Susan Gearhart, **a provision made that no lights be added to the road so that it could not be seen at night.**
4. **All above ground water tanks be removed.** He stated that Mayor Morrison had written an appeal before the project was approved in April by the Planning Commission and the Gearharts had been recruited by either city staff or the city's attorney to actually file the appeal. This was one of the issues that could be addressed or resolved.
5. **Landscaping as previously proposed (berm and trees) to screen the construction of the house and the house, itself, after construction may not be needed at location 1B.** In his opinion, artificial shrubbery would draw attention to that location and nothing was probably needed, now that it had been agreed to move the house even farther back from the knoll. Only native plants should be planted, if landscaping is still deemed beneficial for screening.
6. **Giving leeway to the grading.** Yes, it would be easiest if no further grading was done, at all, but the current site would minimize or not require any more grading. Moving the house either to the north or south would have changed the grading elevations.

**Mr. Priem** continued by asking that if an appeal were filed, "what are they appealing, now?"

**Chairperson Harrison** asked if the speaker was asking that Numbers 3, 4, and 5 on his handout be added as conditions, since Numbers 1 and 2 had been addressed.

**Mr. Priem** agreed.

**Commissioner King** asked if Numbers 3, 4 and 5 had been discussed with the applicant prior to this meeting and if the speaker would elaborate on his chagrin that all parties were not in agreement, as stated by Mr. Flashman. He also asked if the speaker was currently in favor of the project.

**Mr. Priem** replied that all of the issues, above, had been brought up before this meeting and the applicant had "warmed to them." There was never a written agreement, but he had a copy of the agreement that was used to itemize the points. Nothing was ever signed and he believed that, last weekend, the Gearharts were on board and in agreement. He stated that he was "thrilled" that the applicant agreed to move the home site back that far. If Numbers 3, 4 and 5 were added, his answer would be "an extreme yes" in favor of the project.

**Commissioner Lydon** asked where the water source for the home would be with the removal of the existing water tanks.

**Mr. Priem** replied that he had built a home nearby and he had had to deal with most of the issues that the applicant was dealing with. He had offered his plans to the applicant and had recommended the people who had installed his water systems. The water for fire protection would come from the huge pool that would be constructed and drinking water would come from two underground systems. He approved of removing the tanks from the top of the hill.

**Commissioner Chan** recalled that Sites 2 and 3 had been discounted, because of the fear of the water tanks failing.

**Mr. Priem** stated that she was speaking of the huge reservoir owned by the Alameda County Water District, which was cleverly hidden and not the water storage tanks for the proposed home.

**Commissioner Lorenz** asked for clarification regarding the speaker's claim about Mayor Morrison and the City Attorney.

**Mr. Priem** stated that when speaking with the Gearharts, he had read an email from Mayor Morrison, which was actually the preliminary wording for the appeal. He believed the Gearharts were under a lot of pressure from many in the community to file an appeal.

**Commissioner Lorenz** asked staff to speak on the speaker's assertion.

**Planning Director Schwob** knew nothing about the speaker's comment and Planning staff would never advise anyone concerning the filing of an appeal.

**Velimir Sulic**, applicant's engineer, stated that the roadbed was wide enough to meet the conditions for fire requirements. Only 45 feet of road, out of 1900 feet, was less than 20 feet wide. The slope had existed for over 40 years with no failure. Nothing would be done to the road except for the addition of a surface.

**Chairperson Harrison** asked him if, unequivocally, there would be no encroachment on the 30 percent grade.

**Mr. Sulic** repeated that there would be no encroachment. He added that by lowering the house six inches and moving it toward the saddle, there would be less grading. The elevations would be almost identical to what was shown on the current exhibits.

**Paul Kozachenko**, Gonsalves & Kozachenko, stated that he believed that what the Commission decided did matter and always mattered. It was important for the Commission to continue hearing such matters, regardless of the threat of appeal. He believed the Commission had accumulated enough information over time to make a decision. It was obvious that the applicant had exhibited good faith by agreeing to move the site of the house, once again. He had some specific suggestions concerning the wording of some of the conditions, which would make the proposed site clearer. He suggested that wherever ". . . the saddle area" was written it should be changed to read "as shown on Exhibit 1." He asked that Finding f) be changed to the original wording "has submitted," because Exhibit 2 and the visual analysis proved that the home would not cause a visual problem. He read his suggestion for the rewording of Condition A-1. Regarding Exhibit E, 16, his suggested wording would be, "All new cut and fill slopes . . ." He stated that Curtis Priem's suggested Conditions 3, 4 and 5 were acceptable to the applicant.

**Planning Director Schwob** stated that Commissioner Sharma's question regarding mitigation measures was correct. It should have read "Delete Mitigations #7, #9 and amend #5."

**Chairperson Harrison** closed the public hearing.

**Chairperson Harrison** asked staff to address the changes suggested by Mr. Kozachenko.

**Planning Director Schwob** stated that staff was concerned that adopting Exhibit 1 would not give staff the flexibility to make adjustments that might be necessary to make the grading work. The suggested language was too rigid. Staff's language allowed some flexibility. If

there had to be a “shift, twist or turn” to make the new site work, a new visual analysis might be necessary to show the visual plane had not been compromised.

**City Engineer Hughes** added that it was true that staff had not seen a grading plan and had not seen how the house and circulation elements would fit with the topography. Staff expected to work with the applicant regarding the grading. But if they were not able to agree on the grading plan, it would come back to the Commission.

**Chairperson Harrison** asked if staff was comfortable with making those decisions, since Mr. Flashman had suggested that the Commission was abdicating its duties if it approved the project.

**City Engineer Hughes** replied that if any proposed grading did not conform to the hillside policies or ordinances, Conditions 14 and 15 allowed referral back to the Planning Commission and he was comfortable with them.

**Commissioner Sharma** feared that the intention was to bring minor issues, such as six inches, back to the Planning Commission rather than allowing the project to finally move forward after all these years.

**City Engineer Hughes** agreed that a change of six inches would not come back to the Commission. However, if a plan were proposed that did not conform to the city's hillside zoning regulation, it would allow staff the ability to bring it back for review.

**Commissioner Lorenz** understood that staff had not had time to examine Exhibit 1. Consequently, he could support the rewording of revised Exhibit D. He asked if there was some way to meld the intent of the applicant regarding Exhibit 1 into some flexibility to find a compromise.

**Chairperson Harrison** suggested adding a finding that said, essentially, that the Commission had found Exhibit 1 to be commonly moved into the saddle area, which would give the applicant some assurance that the city had acknowledged their Exhibit 1 recommendation. However, if the site had to be moved six inches, it would not be exactly what Exhibit 1 said.

**Planning Director Schwob** suggested that the wording might be, “. . . in the general location, as shown on Exhibit 1.” The wording would occur within the findings and in Condition A-1.

**Commissioner Chan** asked how the above suggestion was different from giving staff time to assess this new Exhibit 1 and the new Location 1-B. She was uncomfortable with approval, because she had only received a hint about the new location this afternoon, which was a significant change. It seemed premature to make a decision without taking time to evaluate the new information. She noted that the past recommendation had been that the size of the home could not exceed 10,000 square feet; however, the applicant stated that the home was planned to stay at more than 16,000 square feet. Did staff still recommend a floor area of no more than 10,000 feet and, if this new proposal were approved, what would the size of the home be?

**Planning Director Schwob** agreed that it was within the purview of the Commission to direct staff to request that the applicant prepare a full-size scale drawing for review, which would allow staff to bring back revised Conditions and Findings that were based upon the drawing and the other issues brought up by Mr. Priem. All that could also be done during the Development Organization review, unless something was found that “was out of sync.” Staff's recommendation stayed at 10,000 square feet for the size of the home. As crafted in this set of Conditions and Findings, the home would be approximately 16,000 square feet.

**Commissioner Lydon** asked if there were two standards concerning the allowable size of a home in the hills. He asked if the 45 feet of the access road that was discussed by the applicant's engineer had triggered the prohibition to a home no larger than 10,000 square feet.

**Planning Director Schwob** agreed that Commissioner Lydon was correct about the two standards for the maximum size of a house to be built in the hills. One section of Measure T stated that the size of a home could be a maximum of 10,000 square feet or one percent of the lot area, up to a maximum of 20,000 square feet. In staff's opinion, the home should be limited to 10,000 square feet because it would be accessed by a road that crossed over a 30 percent slope.

**City Engineer Hughes** replied that approximately 50 feet of the road was less than 20 feet wide, but approximately 800 feet of the length of the road crossed the 30 percent slope.

**Commissioner Lydon** asked if staff felt the Planning Commission had made an incorrect decision when approving a 16,000 square foot home prior to this meeting.

**Planning Director Schwob** answered, "Frankly, yes."

**Commissioner Chan** asked staff to explain what "encroachment" meant. Where did paving fit within the definition? If the current access road had to be paved in order to provide a driveway to the home, was it considered encroachment?

**Planning Director Schwob** stated that encroachment into a 30 percent slope could be for a structure or grading under Measure T's definition of development. Paving was a form of development and it would come under Measure T, as well. In his opinion, where the paving crossed the 30 percent slope, it would be encroachment.

**Commissioner King** believed that the Planning Commission was going to "punish this citizen for trying, yet again, to compromise by moving this house further back" and another can of worms would be opened up. He recalled that the applicant had been asked to do certain things after approval of the project at the last meeting, none of which had anything to do with the size of the home. He was opposed to delaying this project again because of the new exhibits, as was suggested by one of the speakers. The applicant had done everything he was asked to do over and over, again, and his project had been approved twice before. It was not fair to the applicant to continue to debate this project and to delay it for another two years. He should be thanked for trying to resolve the issues with the opponents of this project. He believed that Measure T was seriously flawed and would be taken to court, eventually. It seemed that the applicant would have been better served to do only what staff had asked him to do and, if necessary, take this matter to court. He asked if he understood correctly that, regardless of the Commission's decision tonight, staff would assess the new plan and would only bring it back to the Commission if something wrong was found.

**Planning Director Schwob** replied that, if the Commission adopted the recommendation, it would be directing staff to review the revised location. Unless staff found something that was not in compliance with the hillside grading provisions, the permits would be issued to allow the construction to proceed.

**Commissioner Sharma** asked staff to comment on Mr. Priem's Recommendations 3, 4 and 5. He asked if they were flexible enough to allow this project to move forward and if they should be included in the conditions.

**Planning Director Schwob** stated that staff had no issue concerning the lighting and would like to revisit the landscaping. Undergrounding the tanks was a good proposal.

**Planner Nguyen** stated that Mitigation No. 10 stated that the three 10,000 gallon water tanks should be located so visibility from public places was minimized as much as possible. The Commission could modify that condition to allow them to be placed underground.

**Chairperson Harrison** agreed with Commissioner Chan about the Commission being expected to decide a project based upon last minute revisions. However, this was a unique situation and staff was comfortable with their role. Anything that staff was not comfortable with would be brought back to the Commission for review. He applauded Mr. Priem for trying to broker a deal. He agreed that there were a few problems with Measure T and a new path could be taken that would open the measure to interpretation. The additional recommendations were good and staff would have the flexibility it would need in the future for this project.

**Commissioner Lorenz** was also “thrilled” that the house had been moved back and lowered, which made it a better project than the Commission had approved last time. He pointed out that there would be one home on 80 acres rather than one home on each of four 20-acre lots, as could have happened. This project was within the spirit of Measure T and was what the voters wanted, i.e., the applicant and his team had created an invisible house. The applicant was to be applauded for his patience and his willingness to go to great expense to ensure his project was as good as possible. He also complimented all parties involved in this process, as what Measure T had set out to do had been achieved, along with protecting property rights.

**Commissioner King** concurred and thanked Mr. Priem for trying to reach a resolution and for his enthusiastic “yes” for the project. He emphasized that this applicant should not be penalized any more.

**Commissioner Sharma** acknowledged that this had been a long process. However, this had become a great project that fulfilled the purpose of Measure T. The discussion tonight amounted to “nit picking.” The intent of Measure T was not to take property rights away. He would support the project.

**Commissioner Chan** thanked the applicant for “spending lots of money to try to come up with some alternatives.” She appreciated Mr. Priem’s role and his suggestions.

**Commissioner Lydon** stated that he was in agreement with the majority of the speakers. However, Mr. Flashman said it the best, since the Commission was being asked to make a decision concerning “a sight unseen type of situation,” which he did not entirely agree with. Alternately, Measure T had evolved within a sight unseen type of situation, also. The Commission was charged to make a common sense recommendation to City Council after considerable review. He agreed with Commissioner King that at some point, Measure T would have to be clarified so that “we can get on with business.”

**Commissioner King** added that staff would review this project, whether or not the Commission recommended it.

**Chairperson Harrison** clarified that Mr. Priem’s recommended Conditions 3, 4 and 5 and the labeling of Exhibit 1 and 2 would be a part of the motion.

IT WAS MOVED (KING/LORENZ) AND CARRIED BY THE FOLLOWING VOTE (5-1-0-1-0)  
THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING REGARDING FINDINGS  
AND CONDITIONS OF APPROVAL;

**AND**

**DELETE MITIGATIONS #7 AND #9 AND AMEND MITIGATION #5 FROM THE APPROVED  
MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING PROGRAM**



BECAUSE THE PROJECT IS IN CONFORMANCE WITH THE PROVISIONS OF MEASURE T, CONSISTENT WITH THE GENERAL PLAN;

AND

APPROVE PROJECT SUBJECT TO FINDINGS AND CONDITIONS OF APPROVAL FOR THE CONDITIONAL USE PERMIT AND PRELIMINARY GRADING PLAN AS CONTAINED IN EXHIBIT "D" AND EXHIBIT "E", RESPECTIVELY, MODIFIED IN ACCORDANCE WITH INCLUSION OF REVISED LANDSCAPING, WATER TANK AND LIGHTING CONDITIONS AS WELL AS GENERAL REFERENCE TO REVISED EXHIBITS 1 AND 2.

The motion carried by the following vote:

AYES:	5 – Chan, Harrison, King, Lorenz, Lydon, Sharma
NOES:	1 – Chan
ABSTAIN:	0
ABSENT:	1 – Weaver
RECUSE:	0

### MISCELLANEOUS ITEMS

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.
    - Report on actions of City Council Regular Meeting
- There were no City Council actions to report.
- Information from Commission: Commission members may report on matters of interest.
  - Request to establish standards for in-fill development.

**Chairperson Harrison** suggested that the Planning Commission request that staff request that City Council consider mandating that the new houses in an in-fill project that are proposed next door to an existing house must match the height of that existing house. Other units could then be higher. Granted, this could be required when every in-fill project came before the Commission, but it would be fairer to the developer to know at the beginning of the process that it would be required. He also understood that some exceptions would be warranted. He also suggested that site plans include the elevations of the existing surrounding homes.

**Commissioner Sharma** supported the suggestion, which was similar to what had been done in the Washington Street project.

**Commissioner Lorenz** stated that it had worked in the Summerhill development. He would support the suggestion.

**Commissioner Chan** asked if the suggestion would become a law and how would it be adopted. What would be the process?

**Chairperson Harrison** replied that it would be part of the code.

**Planning Director Schwob** stated that it would become a zoning law, which could state that exceptions could be approved by the approval body. The challenge would be to encompass the current method of grading as opposed to what was done in the past. Houses used to be on flat grades and were built very low to the ground. Nowadays, the pad would be slightly built up on the lot to ensure good drainage, which caused the perception that the new homes were much larger, although the scale and size were similar. Staff was seeing, over and over

again, a situation where a small home was purchased, leveled to the ground and replaced with a two-story home with the minimum setbacks, which was completely out of character with the neighborhood, even though it met all zoning standards. The bigger issue was the home next door to the new, larger home. He promised that staff would improve the requirement for the development and vicinity area maps, so that they showed the surrounding homes in better detail. He also stated that showing a section through the site showing the old and new homes would give a better idea of how the development would look within the existing community.

**Commissioner Lydon** asked where Mission Villas was located.

**Planning Director Schwob** replied that it would be located at the corner of Washington Avenue and Enos Street.

**Commissioner Lydon** remembered seeing a lot of soil hauled into that site with the new homes being built on top, by which the current homeowners felt dwarfed. These homes would be two levels over a garage, which exacerbated the perception for the existing residents.

**Commissioner Sharma** asked why restricting larger homes in some of these areas was good for the city, since it was likely to happen throughout the whole area over the next few years.

**Planning Director Schwob** stated that the practice had been that if the developer followed the zoning rules, as they stood, it was allowed. For every week that went by and every new home that was constructed, it had become more and more of an issue with the neighbors, especially concerning privacy issues.

Discussion ensued regarding remodeling an existing home versus demolishing the existing home and building a new home, along with the zoning and assessment differences. Neighborhoods undergoing this kind of change were along Olive Avenue off Washington Boulevard and the De Leon-Anza area.

**Commissioner Chan** had been involved with a public questionnaire that had asked how the individual envisioned the City of Fremont in the future. Most respondents were concerned about density. She asked why there were no public relation warnings from the city to advise residents that more housing and density would take place within the city in the future.

**Planning Director Schwob** noted that extensive public outreach occurred during the formation of the housing element. At that time, the economy was booming. Now, the year to comply with the state's mandated housing units looked like it would be extended to 2008. Outreach would be performed again to point out that density was not always "a bad thing." If growth did not occur in the Greater Bay Area, then it would occur in the San Joaquin Valley and traffic would get worse. Future development would be "a balancing act: A little here, a little there; make it fit; design it well; make it close to services, amenities and transit so that everyone did not have to drive."

Meeting adjourned at 9:45 p.m.

SUBMITTED BY:

APPROVED BY:

Alice Malotte  
Recording Clerk

Jeff Schwob, Secretary  
Planning Commission